

Rules of Department of Social Services

Division 15—Division of Aging

Chapter 6—Alternative Services

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13 CSR 15-6.020 Division Mediation Procedures

PURPOSE: This rule establishes the division's mediation procedures to resolve disagreements regarding the award of subgrants or contracts between an area agency and a service provider, describes the circumstances under which mediation may be requested and the procedures to be followed.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the rule has been filed with the secretary of state. The entire text of the rule may be found at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) The division shall provide the opportunity for mediation to any service provider who meets the following conditions:

(A) Application to provide services under an area plan is denied by the area agency;

(B) Subgrant or contract is terminated or not renewed by the area agency for reasons other than a determination by the area agency that the service provider has materially failed to comply with the terms of the subgrant as provided in 45 CFR Part 74, Subpart M; and

(C) Has completed an appeal of the area agency decision through the area agency grievance procedure and has received the written determination on that appeal.

(2) Within fourteen (14) calendar days following its receipt of the notice of determination from the area agency, the service provider shall file a written request for division mediation with the deputy director of alternative services. The request for division

mediation shall clearly identify the issues to be resolved and the reasons for disagreement with the area agency's final determination.

(3) The deputy director of alternative services or designee immediately shall request, in writing, area agency copies of all records pertaining to the issues and the grievance procedure conducted by the area agency including its reasons for the final determination made.

(4) The deputy director of alternative services or designee may request written copies of any other documents or records from either party as deemed necessary.

(5) Any information requested from either party by the deputy director or designee shall be submitted to the division within seven (7) calendar days following receipt of the written request.

(6) The deputy director of alternative services or designee shall conduct an informal fact-finding meeting(s), involving both parties, to be completed within thirty (30) days of receipt of the request for mediation. At the discretion of the deputy director or designee, one (1) joint meeting with both parties, a series of joint meetings or separate meetings with each party may be conducted.

(7) All parties shall be notified in writing of the dates, times and locations of the fact-finding meetings at least seven (7) calendar days prior to the scheduled date.

(8) Attendance at the fact-finding meeting(s) may include:

(A) Deputy director of alternative services or designee and appropriate division staff;

(B) Area agency director, appropriate governing body members, appropriate staff and other desired representatives; and

(C) Service provider and desired representatives.

(9) If the identified issues are resolved in the fact-finding meeting, the deputy director or designee shall summarize the resolution in writing, obtain signed letters of agreement from both parties and send copies of all documents to the director and all parties involved.

(10) If the issues are not resolved in the fact-finding meeting(s), the deputy director or designee shall prepare a written decision within fifteen (15) calendar days of the final fact-finding meeting that includes the following:

(A) Summarized statement of the issues;

(B) Recommended actions for resolution of the issues that are in accordance with federal regulations, state rules and policies, the area agency's approved area plan, written procedures and specifications for award of the subgrants or contracts;

(C) Specified timelines for implementation of recommendations; and

(D) Advisement of the right to appeal, within thirty (30) days of receipt of notification, to the director for a formal hearing.

(11) Copies of the written decision shall be sent to the director and all parties involved in the mediation procedure.

(12) At any point in the mediation process when it becomes apparent that informal negotiation will not resolve the issues, the deputy director or designee may notify both parties that the mediation procedure is terminated and advise in writing of the right to request a formal hearing by the division within thirty (30) calendar days following receipt of the notification.

Auth: sections 251.070 and 536.023, RSMo (1986); executive order of the governor filed Jan. 31, 1979, effective Oct. 1, 1979 and in compliance with 45 CFR 1321.15(b)(2). Original rule filed Feb. 10, 1982, effective May 11, 1982.

13 CSR 15-6.025 Division Formal Hearings

PURPOSE: This rule requires the division to provide the opportunity for a formal hearing, describes when a formal hearing may be requested and the procedures to be followed.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the rule has been filed with the secretary of state. The entire text of the rule may be found at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) The division shall provide the opportunity for a formal hearing, under the following circumstances:

(A) To an area agency when the division finds that any provision of the area plan or plan amendment is not approvable and the division proposes to disapprove the area plan or plan amendment;



(B) To an area agency when the division proposes to withdraw its designation for the following reasons:

- 1. The area agency does not meet the requirements of federal and state regulations;
- 2. The area plan or plan amendment is not approved; or
- 3. There is substantial failure in the provisions or administration of an approved area plan to comply with federal and state regulations;

(C) To any applicant for designation as a planning and service area whose application is denied by the division;

(D) To any nutrition project that was receiving funds under the former Title VII of the Act on September 30, 1978 that an area agency proposes to defund except as provided in 45 CFR Part 74, Subpart M and has appealed the determination through the area agency grievance procedure and the division mediation procedure; and

(E) To any other service provider whose application to provide services is denied or whose subgrant or contract is terminated or not renewed except as provided in 45 CFR Part 74, Subpart M and has appealed the determination through the area agency grievance procedure and the division mediation procedure.

(2) A written request for a formal hearing shall be filed with the director within thirty (30) calendar days following receipt of notice of the adverse action to be appealed. The written request shall state clearly the actions to be reviewed and enumerate the issues to be resolved.

(A) The director shall designate a hearing panel of three (3) impartial decision-makers to hear all appeals. One (1) member shall be the director or designee who shall serve as presiding officer of the hearing panel.

(B) The director or designee is responsible for arranging the formal hearing and, within fifteen (15) calendar days of receipt of a request for hearing, shall send written notification to all parties concerned of the date, time and location of the hearing.

(C) The hearing shall be completed one hundred twenty (120) calendar days of the date the request for hearing was received by the division.

(D) The purpose of the hearing shall be to receive factual information, both verbal and written, related to the identified issues.

(E) Letters and other written material regarding matters at issue shall be considered correspondence and shall not be considered as part of the information or the record unless formally introduced by the parties involved and admitted by the presiding officer.

(3) The presiding officer shall assure that the aggrieved party received timely written notice of the determination that is being appealed which included the following:

(A) Explanation of the reasons for the determination and the evidence on which the determination was based;

(B) Provision for the opportunity to review any pertinent evidence upon which the determination was based; and

(C) Notification of the right to appeal the determination.

(4) The presiding officer shall assure that in the conduct of the hearing the aggrieved party shall have an opportunity to—

(A) Appear in person to refute the basis for the decision;

(B) Be represented by counsel or other representative;

(C) Present witnesses and documentary evidence; and

(D) Cross-examine witnesses.

(5) The presiding officer shall conduct a fair hearing, avoid delays and maintain order. The presiding officer shall have the authority to—

(A) Regulate the course of the hearing;

(B) Regulate the participation and conduct of the parties and others at the hearing;

(C) Rule on procedural matters;

(D) Question all persons presenting information;

(E) Receive or exclude information; and

(F) Rule on or limit information.

(6) The presiding officer shall designate a reporter for the hearing who shall maintain a record of the proceedings. The record shall consist of the verbatim (tape-recorded) information, exhibits, rulings, decisions and all other pertinent papers and requests, except for correspondence.

(7) The hearing panel shall issue a final written decision, within sixty (60) calendar days of the date of the hearing, which sets forth the reasons for the hearing panel's decision and the evidence on which the decision is based.

(8) Final actions of the hearing panel may include:

(A) Withdrawal of designation as appropriate;

(B) Withholding of funds as appropriate;

(C) Reallocation of funds as appropriate; and/or

(D) Other remedies as deemed appropriate.

(9) The division may terminate the formal hearing procedures at any point if the division and/or aggrieved parties negotiate a written

agreement, signed by both parties, that resolves the issue(s) which led to the hearing.

(10) The division shall notify an applicant for designation as a planning and service area who receives an adverse decision from the division's formal hearing of the right to appeal to the commissioner.

(11) The division shall retain the complete record for a period of at least three (3) years following the date of the hearing.

Auth: sections 251.070 and 536.023, RSMo (1986); executive order of the governor filed Jan. 31, 1979, effective Oct. 1, 1979 and in compliance with 45 CFR 1321.15(b)(2). Original rule filed Feb. 10, 1982, effective May 11, 1982.

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